

JESSE LASLOVICH

Office of the Commissioner of Securities & Insurance
 Montana State Auditor's Office
 840 Helena Avenue
 Helena, MT 59601
 (406) 444-2040

Attorney for the Commissioner

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
 OFFICE OF THE STATE AUDITOR
 STATE OF MONTANA**

IN THE MATTER OF:)	
)	CASE NO.: 07-31-09-316 C
SEAN M. MORGAN)	
(License # 16955),)	CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent.)	

The Commissioner of Securities and Insurance (CSI) within the Office of the Montana State Auditor, pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101, *et seq.*, and Mont. Code Ann. § 2-4-603, and Sean M. Morgan (Respondent), hereby mutually agree as follows:

FINDINGS OF FACT

1. The Respondent had been registered with the Montana Securities Department (Department) as a broker/dealer salesperson and investment adviser representative with ING Financial Partners (ING) from July 15, 1992, until the present.

2. The Respondent was a supervisor for all ING securities salespeople domiciled in western Montana, but his supervisory capacity was suspended by ING due to the circumstances giving rise to this action.

3. Donald A. Garberg (Garberg) was Complainant 1's securities salesperson for her Ameriprise account #1826-2920-4-001.

4. On June 30, 2009, the Department received a call from C.L. regarding the sale of an annuity by Garberg to Complainant 1, an 83 year old resident of the Waterford Assisted Living Facility (Waterford) in Helena, Montana.

5. C.L., a friend of Complainant 1's, alleged that Garberg used high pressure sales tactics when he visited Complainant 1 in October 2008 and convinced her to exchange a large portion of an annuity she had at Ameriprise for 10 years, into an annuity with American General Insurance.

6. Garberg recommended and sold Complainant 1 two annuities in 1999, a RiverSource Flexible Portfolio variable annuity and a RiverSource Retirement Advisor Advantage variable annuity.

7. Both annuities provided a majority of Complainant 1's income, as her only other source of income was \$424 per month in Social Security benefits.

8. On October 17, 2008, Garberg visited Complainant 1 at the Waterford and tried to get her to exchange both of her RiverSource variable annuities to a new annuity with American General Insurance.

9. Even though Complainant 1 did not want to make any changes, she conceded and agreed to take \$31,100.59 from her RiverSource Retirement Advisor Advantage annuity (contract # 9300-7230202) and take \$179,479.36 from her RiverSource Flexible Portfolio annuity (contract # 9300-6394085) and move the funds, totaling \$210,579.95, to a deferred annuity (contract # HDA029822F) with American General Insurance.

10. Complainant 1 paid \$229.79 in surrender charges on the withdrawal from her RiverSource Retirement Advisor Advantage annuity, but did not pay any surrender charges on her RiverSource Flexible Portfolio annuity.

11. The deferred annuity application for contract # HDA029822F was completed by Garberg at Complainant 1's apartment in the Waterford and was signed by Complainant 1 on October 17, 2008.

12. Instead of Garberg signing the Agent signature block on the application, the Respondent, a supervising manager for ING, signed as agent.

13. The Agent signature block above the Respondent's signature contains the following certification: "I certify that I have truthfully and accurately recorded on the application the information supplied by the Owner(s) and personally witnessed the signature(s)."

14. Garberg was the one who recorded the information on the application and personally witnessed Complainant 1's signature, not the Respondent.

15. Garberg did not become licensed with ING until May 1, 2009, nearly six months after he sold Complainant 1 the annuity.

16. Because Garberg was not yet affiliated with ING, the Respondent, who was affiliated with ING, signed off as agent on Complainant 1's annuity application with American General Insurance.

17. In a statement to the Department dated July 10, 2009, the Respondent admitted that he signed Complainant 1's annuity application and said there was "no excuse" for his actions.

18. In a letter to the ING Compliance Department dated July 9, 2009, Garberg stated that he knew it was wrong for the Respondent to sign Complainant 1's annuity application, but did it to avoid alerting Ameriprise that Garberg was involved in the transaction.

19. The Respondent made a commission of \$156.68 on the transaction.

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Securities (Commissioner) pursuant to Mont. Code Ann. § 30-10-107.

2. The Securities Department (Department) is under the control and supervision of the Commissioner pursuant to Mont. Code Ann. § 30-10-107.

3. It is the policy of the Securities Act of Montana to protect the public interest. Mont. Code Ann. § 30-10-102(1).

4. The Commissioner and the Department have jurisdiction over this matter. Mont. Code Ann. §§ 30-10-107 and 30-10-305.

5. It is unlawful for any person, in connection with the offer, sale or purchase of any security in, into, or from Montana to make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading. Mont. Code Ann. § 30-10-301(1)(b).

6. The Respondent violated Mont. Code Ann. § 30-10-301(1)(b) when he made untrue statements or omitted material facts by failing to inform Complainant 1:

- a. that Garberg's recommendation to sell her variable annuity at Ameriprise and use the proceeds for the purchase of another

annuity with American General Insurance may not have been suitable based on her age, her liquidity needs, and her level of sophistication;

- b. that he would be certifying as to the accuracy of the information gathered in her annuity application even though he did not know Complainant 1, did not gather the pertinent financial information necessary to ensure the recommendations were suitable, and had no way of knowing whether the information regarding Complainant 1 was accurate; and
- c. that he would be certifying that he witnessed Complainant 1's signature on the application even though he was not present when Complainant 1 signed the application.

7. Pursuant to Mont. Code Ann. § 30-10-305(3), the Commissioner may, after reasonable notice and an opportunity for a hearing, impose a fine not to exceed the sum of \$5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of the Securities Act of Montana.

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AGREEMENT

The Department together with Sean M. Morgan, Respondent, hereby stipulate and agree to the following:

1. Respondent acknowledges that the Commissioner and Department have jurisdiction over the subject matter of the above-entitled proceeding.
2. Respondent acknowledges he was advised of the right to be represented by legal counsel and retained G. Steven Brown, Attorney at Law, Power Block Building, Suite 4-0, 7 West 6th Avenue, Helena, Montana 59601, to represent him in this matter.
3. Respondent acknowledges that he has read and understands each term of this Consent Agreement and that he enters into this Consent Agreement voluntarily and without reservation.
4. Respondent and the Department stipulate and agree that this Consent Agreement resolves the alleged violations of the Montana Securities Act.
5. Respondent and the Department hereby acknowledge and agree that this Consent Agreement constitutes the entire agreement between the parties and that no other promises or agreements, either express or implied, have been made by the Department or by any member, officer, agent or representative of the Department to induce Respondent to enter into this Consent Agreement.
6. Any notice provided for in this Consent Agreement and any other communication between the Department and Respondents are legally sufficient if given in the following manner:

(a) notice to the Department may be given by mailing the notice by registered or certified mail, postage paid and addressed to the Department as follows:

Jesse Laslovich
Office of Commissioner of Securities and Insurance
840 Helena Avenue
Helena, MT 59601

(b) notice to Respondent may be given by mailing the notice by registered or certified mail, postage paid and addressed as follows:

Sean Morgan
515 Farm View Lane
P.O. Box 8014
Kalispell, MT 59901

7. Either party shall give to the other party notice of change of address for the giving of notices in the manner provided in this Consent Agreement, if applicable.

8. With respect to a possible agency action, Respondent specifically and affirmatively waives a contested case hearing and elects to resolve this matter on the terms and conditions set forth herein.

9. Respondent fully and forever releases and discharges the Commissioner, Department, and all Department employees and agents from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of this administrative action and the Findings of Fact and Conclusions of Law incorporated by reference in this Consent Agreement.

10. The parties acknowledge and agree that this Consent Agreement may not be modified orally and any subsequent modifications to this Consent Agreement must be mutually agreed upon in writing to be effective.

11. The Department and Respondent agree that this Consent Agreement shall be incorporated into and made a part of the attached Final Order issued by the Commissioner herein.

12. Upon execution of this Consent Agreement, the Respondent acknowledges and waives his right to appeal the Commissioner's Order.

13. Upon execution of this Consent Agreement, the Department will not commence any further administrative, civil, or other legal action based upon the allegations set forth in this action that occurred prior to the execution of this Consent Agreement.

14. This Consent Agreement shall be effective upon signing of the Final Order.

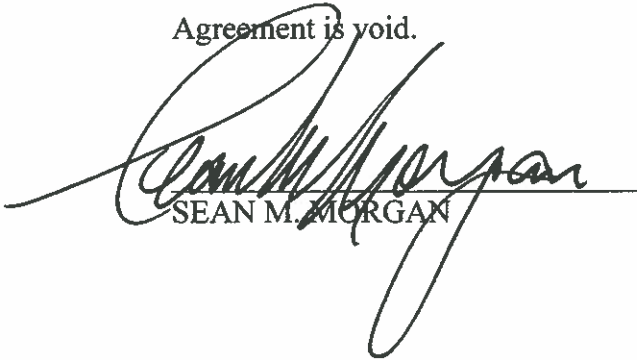
15. Respondent acknowledges that this Consent Agreement and Final Order are public records under Montana law and as such may not be sealed or otherwise withheld from the public.

16. Upon execution of this Consent Agreement, the Respondent shall return to Complainant 1 the entire commission (\$156.68) earned on Complainant 1's transaction.

17. The Department and Respondent stipulate and agree to the imposition of a fine upon the Respondent in the amount of Three Thousand Five Hundred Dollars (\$3,500.00), payable to the State of Montana upon execution of this Consent Agreement.

18. Within one year from the effective date of this Consent Agreement, the Respondent shall pay for, complete, and pass an online professional development course called "The Ethical Entrepreneur" offered by the University of Phoenix. Upon successful completion, the Respondent shall provide proof of successful completion to the

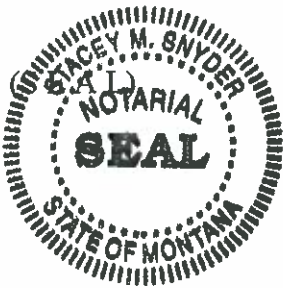
Department no later than one month after receiving proof of passage from the University of Phoenix. If the Respondent fails to successfully pass the course, this Consent Agreement is void.


SEAN M. MORGAN

9/15/09
DATE

State of Montana)
County of Deerhead) :SS

SIGNED and SWORN to before me on this 15th day of September, 2009, by SEAN M. MORGAN.




(Signature)


Stacey M. Snyder
(Printed name)

Notary Public for the State of Montana

Residing at Deerhead Court

My commission expires: June 19th 2010

ACCEPTED ON BEHALF OF THE SECURITIES DEPARTMENT:


JESSE LASLOVICH
Attorney

9.21.09
DATE

FINAL ORDER

Pursuant to the authority vested by Mont. Code Ann. § 2-4-603 and §§ 30-10-101, MCA, *et seq.*, and upon review of the foregoing Consent Agreement and good cause appearing therefore,

IT IS HEREBY ORDERED that the foregoing Consent Agreement between the Securities Department and the Respondent, Sean M. Morgan, is adopted as if set forth fully herein.

DATED this 21st day of September, 2009.

MONICA J. LINDEEN
Commissioner of Securities and Insurance
Montana State Auditor

By: 
LYNNE EGAN
Deputy Commissioner of Securities

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 24 day of SEPTEMBER, 2009, a true and correct copy of the foregoing Consent Agreement and Final Order was served upon the following by hand delivery or by depositing the same in the United States mail postage paid and addressed as follows:

VIA USPS:

Sean Morgan
515 Farm View Lane
P.O. Box 8014
Kalispell, MT 59901

VIA HAND DELIVERY:

Jesse Laslovich, Attorney